ISSUED: October 19, 2001

D.T.E./D.P.U. 95-AD-17

Adjudicatory hearing in the matter of the complaint of Isabel C. Coleman, relative to the rates and charges for electricity sold by Massachusetts Electric Company

APPEARANCES: Isabel C. Coleman
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PRO SE
Complainant

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FOR: MASSACHUSETTS ELECTRIC COMPANY
Respondent

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Estate of Leon Rosenbloom
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Landlord

I. INTRODUCTION

On December 10, 1993, an informal hearing was held before the Consumer Division of the Department of Public Utilities, now known as the Department of Telecommunications and Energy ("Department"), on the complaint of the Estate of Leon Rosenbloom ("Landlord") relative to the rates and charges for electricity sold by Massachusetts Electric Company ("MECo"). The tenant, Isabel C. Coleman ("Tenant" or "Complainant"), was dissatisfied with the informal hearing decision rendered on May 26, 1995, and requested an adjudicatory hearing before the Department pursuant to 220 C.M.R. § 25.02(4)(c). The matter was docketed as D.T.E./D.P.U. 95-AD-17.

Pursuant to notice duly issued, an adjudicatory hearing was held on November 20, 1996, at the Department's office in Boston, in conformance with the Department's Regulations on Billing and Termination Procedures, 220 C.M.R. §§ 25.00 et seq. The Tenant testified on her own behalf.[1] Diane Perella testified on behalf of the Landlord. MECo sponsored the testimony of Andrea D. Blood, MECo's liaison to the Department and keeper of records for the purpose of adjudicatory hearings. The evidentiary record[2] consists of 22 exhibits, of which five were introduced by the Tenant, twelve were introduced by MECo, and five were introduced by the Landlord.

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[1] The Tenant sponsored the testimony of Robin Coleman, the Tenant's daughter. The testimony of both Robin Coleman and Isabel Coleman will be referred to hereinafter as the Tenant's testimony. The Tenant also sponsored the testimony of Jane Haskell, a tenant in another rental unit within the Landlord's building.

[2] MECo received and responded to one record request but the response was never docketed. As will be discussed below, the response is not necessary to the determination of this dispute, and thus is not included as part of the evidentiary record.

II. SUMMARY OF ISSUES

The Tenant disputes a bill in the amount of $2,528.75 for electric service provided to her during her residence in a rental unit, 72R Main Street, Rockport, Massachusetts, located at the rear of a house at 72 Main Street, Rockport, Massachusetts for the period October 31, 1990 to June 4, 1993, during the existence of alleged violations of the State Sanitary Code, 105 C.M.R. § 410.254 and § 410.354 (Exh. MECo-2). The parties dispute the interpretation of six documents issued by the Town of Rockport Board of Health ("Board of Health") between September 22, 1992 and August 12, 1993. The Tenant contends that these documents indicate that the Board of Health issued a citation for two violations of the Sanitary Code, and that subsequent documents rescinded, but then reinstated the citation for the violations. The Tenant also asks the Department to determine whether additional alleged violations, which the Board of Health did not cite, may provide a basis for reimbursement to the Tenant. The Landlord denies that additional conditions violating the Sanitary Code existed at the Tenant's apartment.

III. SUMMARY OF FACTS

A. Massachusetts Electric Company

MECo argues that from October 31, 1990 to June 4, 1993, the total bill for electricity measured by the meters connected to the apartment was $2,528.75, and that this amount is

properly due and owed to MECo[3] (Tr. at 118, 164). MECo presented the following six documents from the Board of Health:

Inspection Report of September 22, 1992

The first document from the Board of Health is an inspection report ("Inspection Report") dated September 22, 1992 (Exh. MECo-2). This document indicates that a health officer from the Board of Health inspected the apartment on September 22, 1992 and found the following two relevant conditions: "Entrance hall light not metered on 72R bill," and "Parking area flood lights are metered on 72R bill. Should be on owner's statement" (id.).

October 5, 1992 Letter

The second document is a letter, dated October 5, 1992, from the Board of Health to the Massachusetts Department of Health, Division of Community Sanitation ("October 5, 1992 Letter") (id.). The October 5, 1992 Letter describes two relevant conditions at the apartment found after an inspection of the Tenant's apartment on September 22, 1992:

> A. To the rear of the Coleman dwelling unit, there is a utility shed. At the roof peak there are flood lights mounted to light up a parking area. These flood lights are tapped into the Coleman electric circuit.
>
> B. In the entrance to the Coleman unit, an overhead light is mounted to light up the hall and stairway to an upstairs bedroom. This overhead light is not on the Coleman circuit.

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[3] MECo further states that for the period of June 11, 1993 through November 1, 1993, which is not the period of any existing Sanitary Code violation, there is an outstanding balance of $89.97, and that this amount is properly due and owing from the Tenant (Tr. at 119-20, 164).

(id.). This letter does not state when the conditions first existed and does not cite the Sanitary Code.

November 6, 1992 Letter

The third document is a letter, dated November 6, 1992, from the Board of Health to the Landlord ("November 6, 1992 Letter") (id.). This document attaches the October 5, 1992 Letter and cites "Violations of the State Sanitary Code, Chapter II-(105 CMR 410-830)" (id.). The November 6, 1992 Letter directs the Landlord to correct the violations within fourteen days of receipt of the letter (id.).

December 4, 1992 Letter

The fourth document is a letter, dated December 4, 1992, from the Board of Health to Ernest A. Lucci, the Landlord's property manager ("December 4, 1992 Letter") (Exh. MECo-4). This letter indicates that the Board of Health reviewed copies of the lease between the Tenant and the Landlord and noted that the Tenant had withheld $15 per month from the rent payment (id.). The December 4, 1992 Letter further states, "From this information my conculsion [sic.] is that an arrangement does exist between Mrs. Coleman and the Estate of Leon Rosenbloom to finance electricity to the parking area light" (id.). The December 4, 1992 Letter further adds that "the overhead light in the entrance hallway . . . will be connected to [the Tenant's] meter in the near future" (id.).

January 11, 1993 Letter

The fifth document is a letter, dated January 11, 1993, from the Board of Health to MECo ("January 11, 1993 Letter") (id.). This letter attaches a copy of the State Sanitary

Code, highlights 105 C.M.R. § 410.254(B), and states, "As per my reference letter, I find no grounds for complaint about the parking area light metering (Nul & Void) [sic.]" (id.).

August 12, 1993 Letter

The sixth document is a letter, dated August 12, 1993, from the Board of Health to the Consumer Division of the Department ("August 12, 1993 Letter") (Exh. MECo-6). The letter states:

> On September 22, 1992 . . . [t]wo cases of cross metering were found (one case was being compensated for through the rent). . . . We had meetings and were left with the impression that the dispute had been corrected. . . . On June 11, 1993, a new owner had King Electric correct all cross metering at 72R Main Street, Rockport, MA. . . . Prior to the correction of cross metering, a violation of the State Sanitary Code, 105 CMR, Section 410.354 did exist.

(id.).

MECo stated that upon receipt of a copy of the November 6, 1992 Letter, which MECo considered to be a citation for a Sanitary Code violation, MECo informed the Landlord on November 16, 1992, that it was placing service in the Landlord's name (Tr. at 87; Exh. MECo-2). MECo explained that it does not question the validity of the Sanitary Code violation once it receives a valid citation (Tr. at 88). MECo asserted that its policy on billing was in accord with the Consumer Division's regulations on Billing Procedures for Residential Rental Property Owners Cited for Violation of the State Sanitary Code 105 C.M.R. § 410.354 or § 410.254 (220 C.M.R. § 29.00 et seq.), and that upon receipt of a notice of a Sanitary Code violation, it would reverse the billing and bill the property owner retroactively up to two years if the tenant has lived at the rental unit for over two years (Tr. at 89). Thus, MECo

stated, it billed the Landlord for electricity consumed from October 31, 1990 through the end of the billing cycle on November 2, 1992 (id.).

MECo stated that it received the January 11, 1993 Letter, from the Board of Health finding that the code violation was "null and void" (id. at 94). Because MECo recognizes the Board of Health as the certifying agency for violations of the Sanitary Code, MECo does not question the validity of the Board of Health findings (id. at 95). Therefore, MECo placed service back into the Tenant's name and rebilled her as of October 31, 1990 (id. at 94; Exh. MECo-4).

MECo stated that it then received a copy of the August 12, 1993 Letter from the Board of Health to the Consumer Division (Tr. at 98; Exh. MECo-6). MECo interpreted this letter to mean that a code violation had always existed and that MECo should not have reversed the billing (Tr. at 100). Thus, MECo again billed the Landlord, this time for electricity consumed from October 31, 1990 through June 4, 1993 (id.). This period includes the two-year period before the date of the initial citation up to the date on which the Landlord sold the property (id. at 100-101). MECo understood the letter to state that the new owner corrected any code violation on June 11, 1993 (id. at 101).

MECo confirmed that two meters served the Tenant's rental unit and both were on her account (id. at 90). According to an analysis of her account prepared by MECo, the meter numbers were 052443976 and 014532161 (Exh. MECo-1). The billings to the customer tally the amount due for electricity through both meters into a single bill for each billing cycle (id.).

MECo also stated that it had a record of only one "suite check"[4] of the meters at the address, performed on December 20, 1991, upon a request from Ernest Lucci, the property manager (Tr. at 129-30, 135). MECo states that as a result of the suite check, it verified that the Tenant was billed on the proper meters (id. at 130).

B. The Tenant

The Tenant stated that she lived in the apartment from 1965 to 1993 (id. at 82). The property is divided into three rental units (id. at 13). Her apartment is located at the rear of the house (id.). The Tenant stated that two electricity meters on the property served circuits in her apartment (id. at 13-14). One meter on the property served the two apartments in the front of the house (id. at 14).

The Tenant argues that there were cross-wiring violations, based on the November 6, 1992 Letter from the Board of Health (Exh. MECo-2). The Tenant believes that the Citation was rescinded in full for both violations of the Sanitary Code as a result of the letters of December 4, 1992 and January 11, 1993 (Exh. MECo-4). The Tenant denies that she and the Landlord had an agreement to compensate her for the parking area light with a $15 per month deduction from rent (Tr. at 124-25). The Tenant argues, however, that she had the citations "reinstated" (id. at 57, 60), relying upon the August 12, 1993 Letter (Exh. MECo-6).

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[4] MECo stated that during a suite check, MECo only pulls out the each individual meter to see which apartment unit loses power, but does not check internal wiring (Tr. at 131). Thus, a suite check will not necessarily detect crossed wiring (id.). The parties refer to this procedure, variously, as either a "suite check" or a "sweep test."

The Tenant further argues that another tenant's electric heater must have been cross-wired to her meters[5] (Tr. at 19). As grounds for her argument, the Tenant stated that after the Landlord died in 1991, his estate, which continued to hold the property as landlord, renovated the two units in the front of the house and installed electric heat (id. at 12). The Tenant stated that after the renovation, her electricity bill rose drastically (id. at 12, 35, 45). The Tenant stated that in January 1992, her daughter, who lived with her at the apartment, was out-of-town for two weeks, and that during that same month, she herself was away for five days, but that she received one of her highest bills for that billing cycle (id. at 40-42). The Tenant stated that when she complained to the Landlord in September 1992, the contractors who had performed the renovations investigated and found that all of the light fixtures on the second floor of the house were connected to her meter (id. at 18). The Tenant stated that the contractors corrected the miswiring (id.). The Tenant stated that she asked MECo to perform a suite check, but that this was not completed because she was not home to let the MECo electricians into her apartment when they arrived (id. at 19). The Tenant stated that when the Tenant and her daughter turned off all of the switches to the fuse box for the Tenant's unit, the other tenants complained that they had no heat (id. at 20).

The Tenant stated that the Landlord's property manager told her that the reason for the higher bill was because her water heater, electric dryer, and an electric heater for her

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[5] MECo objected to all testimony and documents regarding the cross-wiring and the validity of the Citation, arguing that the Department does not have the jurisdiction to determine whether a citation is valid, and that such arguments were beyond the scope of the hearing (Tr. at 55, 80, 147, 149).

apartment, which previously had been connected to the meter for the units in the front of the house through a miswired bedroom circuit, were reconnected to the Tenant's meter after the renovation (id. at 50, 73). The Tenant rejects this explanation (id.). The Tenant admitted that the bedroom circuit was not connected to her meters, but denies that the electric dryer was operational (id. at 76).

C. The Landlord

The Landlord stated that it was the owner of the apartment in which Isabel Coleman was a Tenant, from April 1977 until the Estate sold the property on June 4, 1993 (id. at 8-9, 61).

The Landlord argues that the Tenant and the Landlord had agreed that the floodlights mounted on the utility shed would be on the Tenant's meter and that there would be a $15 per month deduction to her monthly rent (id. at 68). Furthermore, the Landlord stated that the second violation for the hall- and stairway light was corrected, and that this light previously had not been connected to her meter (id.). The Landlord also testified that the light referenced in the October 5, 1992 Letter was for a light inside the Tenant's apartment, not for a common hallway light (id. at 68-69).

The Landlord presented several documents to contradict the Tenant's testimony (Exhs. Estate-1 - Estate-5). The Landlord stated that in April 1991, it sought bids to renovate the building (Tr. at 62). The Landlord argues that its electrician discovered that a bedroom circuit, on which the Tenant's electric heater, electric dryer, and water heater were connected, was not connected to the Tenant's meter (id. at 73).

The Landlord testified that it received the November 6, 1992 Letter from the Board of Health (id. at 67). The Landlord further stated that it met with the Board of Health and MECo electricians, and that, on January 20, 1993, they performed a "sweep test," in which they compared meters to the customers' apartments by shutting off all of the circuits (id. at 65, 67). The Landlord stated that the electricians performed several sweeps, and that every time this was done, any wiring problem found was corrected (id. at 70).

IV. STANDARD OF REVIEW

The Sanitary Code, 105 C.M.R. § 410.354 provides in pertinent part:

> (A) The owner shall provide the electricity and gas used in each dwelling unit unless:
>
> (1) Such gas or electricity is metered through a meter which serves only the dwelling unit or other area under the exclusive use of an occupant of that dwelling unit, except as allowed by 105 CMR 410.254(B); and
>
> (2) A written letting agreement provides for payment by the occupant.
>
> (B) If the owner is required, by 105 CMR 410.000 or by a written letting agreement consistent with 105 CMR 410.000, to pay for the electricity or gas used in a dwelling unit, then such electricity or gas may be metered through meters which serve more than one dwelling unit.
>
> (C) If the owner is not required to pay for the electricity or gas used in a dwelling unit, then the owner shall install and maintain wiring and piping so that any such electricity or gas used in the dwelling unit is metered through meters which serve only such dwelling unit except as allowed by 105 C.M.R. 410.254(B).

In addition, 105 C.M.R. § 410.254 provides in pertinent part:

> (B) In a dwelling containing three or fewer dwelling units, the light fixtures used to illuminate a common hallway, passageway, foyer and/or stairway may be wired to the electric service serving an adjacent dwelling unit provided that if the occupant of such dwelling unit is responsible for paying for the electric service to such dwelling unit:

> (1) a written agreement shall state that the occupant is responsible for paying for light in the common hallway, passageway, foyer and/or stairway; and
> (2) the owner shall notify the occupants of the other dwelling units.

It is well settled that the Department has jurisdiction to enforce these provisions of the Code, because no substantive or jurisdictional conflict exists between the Department's authority and the authority of the certifying agency which makes a finding whether a Code violation exists. Folloni v. Eastern Edison Company, D.P.U. 92-AD-45 (1994); Eastern Edison Company v. Prybuszauckas, D.P.U. 84-86-64, at 5 (1985); Eastern Edison Company v. MacDonald, D.P.U. 84-86-59, at 5 (1985).

In determining the party responsible for payment for utility service where a violation of the Code is alleged, the Department will not re-litigate the facts underlying a finding of a Code violation but will accept documentation by a certifying agency as probative evidence of the violation. Cahill v. Boston Edison Company, D.P.U. 88-AD-6, at 5-6 (1990). A citation issued by a Certifying Agency to the property owner is presumed accurate, and parties may not contest the accuracy of a citation before the Department. 220 C.M.R. § 29.04(1). Similarly, the Department will not re-litigate the facts underlying a recission of a citation for a Sanitary Code violation. DeAngelo v. Massachusetts Electric Company, D.P.U. 90-AD-10 (1995); Kamarinos v. Massachusetts Electric Company, D.P.U. 90-AD-9 (1994).

As noted, the Code provides that the owner of a residential building must pay for electricity when it is not metered through a single meter serving only one dwelling unit. D.P.U. 84-86-64, at 5; D.P.U. 84-86-59, at 4. The Department has held that any

contractual arrangement between the landlord and the tenant for utility service, i.e., a lease agreement, is superseded by the landlord's warranty that rental units are in compliance with the Code. D.P.U. 88-AD-6, at 7; D.P.U. 84-86-59, at 5. The Department has also held that it would be inappropriate to permit a utility to enforce a contract for service against a person who, as a matter of public policy, is without liability. D.P.U. 84-86-64, at 5; D.P.U. 84-86-59, at 5.

Prior to September 27, 1994, in the event of a Code violation, the Department did not apportion the tenant's bill between the tenant and the landlord. D.P.U. 88-AD-6, at 6; see generally D.P.U. 84-86-64; D.P.U. 84-86-59. On September 27, 1994, the Department adopted regulations entitled "Billing Procedures For Residential Rental Property Owners Cited For Violation of the State Sanitary Code 105 C.M.R. § 410.354 or 410.254," which became effective on October 21, 1994. Sanitary Code Rulemaking, D.P.U. 90-280 (1994); 220 C.M.R. § 29.00 et seq. These regulations provide, among other things, that in instances of minimal use, as defined by the regulations, property owners will not be responsible for the full cost of electric or gas service provided to the tenant customer for the retroactive period of the violation of the Sanitary Code, but will be responsible for paying the cost of operating those electric or gas appliances, outlets, or other energy consumption sources cited by the certifying agency as wrongfully connected to the meter serving the dwelling unit of the tenant customer for the retroactive period of the Code violation. 220 C.M.R. § 29.08; see D.P.U. 90-280, at 5.

Accordingly, relative to requests to appeal the informal decision of the Department's Consumer Division filed on or after October 21, 1994, the effective date of the above regulation, the Department will apportion the tenant's bill between the tenant and the landlord in instances of minimal use, where appropriate. 220 C.M.R. § 29.08 provides in pertinent part:

> (1) Minimal Use Violation(s). A Code violation(s) that individually or in the aggregate includes interior and/or exterior common area illumination (excluding exterior flood light(s)), smoke, fire and/or security alarm(s), door bell(s), cooking range, and common area electrical outlets. If any one or all of these energy users are cited by the Certifying Agency as wrongfully connected to the meter serving the dwelling unit of the tenant customer, provided the Certifying Agency has not also cited the wrongful connection of heating, air conditioning, hot water heating, electrical pump(s), clothes dryer, refrigerator or freezer on the meter serving the dwelling unit, the utility company shall bill the property owner $10.00 per month for the retroactive time period determined pursuant to 220 CMR 29.07(1).

The purpose of the Code is not to penalize unduly an owner of a dwelling or to profit unduly a tenant in a dwelling because of Code violations. See Commonwealth v. Haddad, 364 Mass. 795, 799 (1974) (holding that the primary purpose of the Code is to prevent violations). Furthermore, the Department may grant an exception to any provisions of 220 C.M.R. § 29.00. Whether or not the Department finds that the Code violation is a minimal use violation, the Department may where appropriate apportion the bill between the tenant and landlord if the result under 220 C.M.R. § 29.00 et seq. would otherwise unfairly and unduly profit or penalize either party. Moruzzi v. Commonwealth Gas Company, 96-AD-6, at 12-13 (2001).

The time period[6] that the property owner is responsible for paying for service previously billed to the tenant resulting from a Code violation is set forth in 220 C.M.R. § 29.07, which states in part:

> (1) Time Period. A utility company shall determine the time period of the property owner's responsibility for paying for service previously billed to the tenant customer resulting from the Sanitary Code violation(s) pursuant to 105 C.M.R. 410.354 and/or 105 C.M.R. 410.254 as the lesser of (a),(b) or (c):
>
> (a) By calculating back two years from the effective date of the citation, pursuant to 220 C.M.R. 29.04(2); or
>
> (b) By referencing back to the date that the tenant customer became customer of record for service to the dwelling unit that is the subject of the violation; or
>
> (c) By reviewing billing history for the dwelling unit that is the subject of the violation over a two year period back from the effective date of the citation, pursuant to 220 C.M.R. 29.04(2) to determine the approximate date of commencement of the Sanitary Code violation(s).

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6 Historically, the specific beginning date of the landlord's responsibility was determined by the policy and practice, as stated in the decision rendered by the Consumer Division of the Department, following an investigation pursuant to 220 C.M.R. § 25.02(4)(b). Folloni v. Eastern Edison Company, D.P.U. 92-AD-45, at 10-11 (1994). For example, from January, 1992 to October 22, 1994, if a tenancy is for a period greater than two years, the landlord's responsibility began at a point two years prior to the date of the notice of the Sanitary Code violation. Prior to January, 1992, if the tenancy began as much as six years prior to the date of the notice of the Sanitary Code violation, a landlord could be held responsible for a period not to exceed six years. Generally, where there was no evidence as to when the Sanitary Code violation commenced, the landlord's responsibility for electric or gas charges in situations of cross-wiring or cross-piping was calculated from the date the Sanitary Code became effective, September 1, 1983, or the date of the inception of the tenancy, whichever was later, and continued until the time the Sanitary Code violation was corrected, subject to certain time limits. See Krell v. Boston Edison, D.P.U. 91-AD-12 (1995); Tibbetts v. Massachusetts Electric Company, D.P.U. 90-AD-20 (1993); Burns v. Massachusetts Electric Company, D.P.U. 85-13-9 (1985).

The precise ending date of the period of the Code violation is governed by 220 C.M.R. § 29.04(3). Specifically, that section states:

> (a) The effective date of correction of the violation(s) set forth in the citation shall be the actual date of reinspection of the dwelling as referenced in the written correction notice issued by the Certifying Agency to the property owner. The property owner shall give such correction notice to the utility company pursuant to 220 C.M.R. 29.06(3)(e);
>
> (b) If the actual date of reinspection is not referenced in the correction notice, the effective date of the correction of the violation(s) set forth in the citation, shall be the date that appears on the face of the correction notice issued to the property owner;
>
> (c) If more than 30 days elapse between the effective date of the correction and the date of notice to the utility company of such correction, the property owner shall be responsible for paying the electric or gas service provided to the tenant customer until the date that the property owner provides a copy of the correction notice to the utility company.

Unless additional cited violations of 105 C.M.R. § 410.354 and 105 C.M.R. § 410.254 existed in a tenant customer's dwelling unit, that tenant is not entitled to recover a reimbursement for utility payments if the violation pertains to electricity usage not registered on that tenant's meter. 220 C.M.R. § 29.12. That section provides a specific exception:

> When it is shown that some of the electricity and/or gas used in a dwelling unit was registered by a meter other than the meter serving the dwelling unit which is the subject of the violation, and the electric or gas company's records [s]how that the tenant customer was not billed for such usage, the tenant customer shall not recover a reimbursement of utility payments on the basis of a Code citation as contemplated by 220 C.M.R. § 29.00.

Id.

V. ANALYSIS AND FINDINGS

A. Introduction

The principal issues in this case are whether a citation for a violation of the Sanitary Code existed, and, if so, whether the Tenant is entitled to recover a reimbursement for utility payments for her electricity usage during the existence of such a violation.

The parties' dispute over the citations revolves around two conditions found in the rental unit. The first condition was a flood light that illuminated a parking area. This flood light was connected to the Tenant's meters. The second condition was a light that illuminated a hall and stairway to an upstairs bedroom of the Tenant's rental unit. This light was not connected to the Tenant's meters.

B. Interpretation of the Board of Health Documents

Although the Board of Health issued several letters regarding the two relevant conditions that might invoke the Sanitary Code, a plain reading of the letters indicates that the Board of Health intended to rescind only the citation for the parking area light, and, further, that the Board of Health did not reinstate the citation for this same condition.

The Inspection Report of September 22, 1992 describes the two relevant conditions in the rental unit discussed above, as well as a third condition for an animal infestation, which is not relevant to the Department's determination (Exh. MECo-2). Although the report describes the conditions with sufficient clarity to identify the conditions that the Landlord may need to correct, it does not identify the conditions as violations of the Sanitary Code or use language to that effect. The Department concludes that this document is not a citation. Macedo v. Commonwealth Gas Company, D.P.U. 92-AD-9, at 10, 13 (1994) (holding that a letter that did

not reference or cite any pertinent sections of the Sanitary Code or make specific findings as to the sections of the Sanitary Code that were alleged to have been violated was not clear and convincing evidence that a Sanitary Code violation existed).

The October 5, 1992 Letter describes clearly the conditions identified in the Inspection Report, but also does not cite to the Sanitary Code (Exh. MECo-2). The Department concludes that this letter also is not a citation.

The November 6, 1992 Letter is a citation for violations of the Sanitary Code (id.). The letter refers to the October 5, 1992 Letter, cites provisions of the Sanitary Code, and directs the Landlord to correct the violations within fourteen days (id.). Thus, at this point, the Board of Health had issued a citation for two violations of the Sanitary Code. Pursuant to 220 C.M.R. § 29.04(2)(a), the effective date of this citation is not November 6, 2000, but rather, the date of the inspection, September 22, 1992, as referenced in the attachment to the citation.

The parties incorrectly interpret the December 4, 1992 Letter as rescinding the citations for both violations (Exh. MECo-4). This letter does not in itself speak with sufficient clarity to permit the Department to conclude that the Board of Health intended to alter its citations. Although the letter devotes a separate paragraph to each condition found in the rental unit, it never cites to the Sanitary Code. Furthermore, although the Board of Health's determination that the Landlord and Tenant had an arrangement to compensate the Tenant for the parking area light through a rent reduction might suggest that the Board of Health could find that the citation for the parking light should not have been issued, it does not use any specific language

to that effect. As to the violation for the hall- and stairway light, the letter indicates only that this condition would be corrected in the near future, not that it had been corrected.

The January 11, 1993 Letter does speak with sufficient clarity to allow the Department to determine that the Board of Health intended to rescind the citation for the parking area light (id.). Because the Board of Health found that the Landlord and Tenant had an agreement to compensate the Tenant for the parking area light through a rent reduction, the Board of Health found this citation "Nul [sic.] & Void" (id.).[7] The parties incorrectly interpreted this letter as rescinding the citation for both violations. This letter makes no reference to the violation for the hall- and stairway light. Thus, the Department concludes that the Board of Health did not rescind the citation for the hall- and stairway light violation. The Department finds that this letter rescinds the citation only for the parking area light, referencing the December 4, 1992 Letter.

The crucial letter upon which the Tenant relies is the August 12, 1993 Letter (Exh. MECo-6). This letter does not describe any conditions with specificity, but rather states only that "[o]n September 22, 1992, . . . [t]wo cases of cross metering were found (one case was being compensated for through rent)" (id.) The letter indicates that a new owner of the rental unit corrected "all cross metering" on June 11, 1993, and concludes that "[p]rior to the

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[7] Although the Department does not recognize the validity of such agreements because they are superceded by the landlord's warranty that the rental units are in compliance with the Code, Cahill v. Boston Edison Company, D.P.U. 88-AD-6, at 7 (1990); Eastern Edison Company v. MacDonald, D.P.U. 84-86-59, at 5 (1985), the Department defers to the authority of the Board of Health to issue and rescind citations.

correction of cross metering, a violation of the State Sanitary Code, 105 C.M.R., Section 410.354 did exist" (id.).

Nothing in the August 12, 1993 Letter persuades the Department to conclude that the Board of Health intended to do anything but clarify their previous findings and to advise the Department's Consumer Division as to the current status of the conditions found in the rental unit. Although the letter refers to two cases of cross-metering, which the Department understands to refer to the two conditions identified in the previous letters from the Board of Health, and indicates that a new owner corrected "all cross metering" on June 11, 1993, the letter does not describe both conditions as violations of the State Sanitary Code. Indeed, this letter appears consistent with the letters of December 4, 1992 and January 11, 1993. The letter states that, prior to the correction of cross-metering, a violation existed in the singular, not in the plural. Read in conjunction with the previous correspondences, the "violation" to which the letter refers is the violation for the hall- and stairway light.

The Department concludes that this letter does not "reinstate" the citation for the parking area light. Because the Department does not address collateral issues in proceedings relating to alleged Sanitary Code violations, the Department has held that parties asserting the existence of a Sanitary Code violation cannot rely upon vague notices, but must provide clear and convincing evidence that a citation for that violation was issued. Macedo, D.P.U. 92-AD-9. Even supposing that the Board of Health intended "a violation" to refer to the parking area light, the imprecise reference in the August 12, 1993 Letter as to which

specific condition the Landlord had to correct renders this supposed citation unacceptably vague for our purposes.

B. Entitlement to Reimbursement for the Issued Citation

Having found that the Board of Health issued a valid citation for a Sanitary Code violation, which was not corrected until June 11, 1993, the Department must decide whether on the basis of this citation the Tenant is entitled to recover a reimbursement for amounts that she paid for her electricity bill. The Tenant's hall- and stairway light was not connected to either of the two meters serving her rental unit (Exh. MECo-2). Furthermore, MECo's records show that the Tenant was billed only for the two meters serving her rental unit (Tr. at 90, 130; Exh. MECo-1). The Department's regulations specifically exclude recovery on the basis of a Sanitary Code violation where the electricity used was registered by a meter other than the meter serving the tenant's dwelling unit, and where the tenant was not billed for such usage. 220 C.M.R. § 29.12. Therefore, he Department concludes that the Tenant is not entitled to a reimbursement on the basis of this Sanitary Code violation.

C. Collateral Issues

The Tenant and the Landlord presented a number of issues that are beyond the scope of the Department's inquiry in a complaint alleging the existence of a Sanitary Code citation. The Department is not the appropriate forum for re-litigating the facts underlying the issuance or rescission of a citation for a Sanitary Code violation. DeAngelo, D.P.U. 90-AD-10; Kamarinos, D.P.U. 90-AD-9; Cahill, D.P.U. 88-AD-6, at 5-6. Therefore, the Department will not address the arguments about whether or not the Landlord and Tenant actually had an

agreement to compensate the Tenant through reduced rental payments for the parking area light, and thus whether the Board of Health should have rescinded the citation for the parking area light. Although the Department does not recognize such agreements, the Department presumes that the Board of Health's citations and rescissions of citations are accurate. 220 C.M.R. § 29.04(1); D.P.U. 88-AD-6, at 7; D.P.U. 84-86-64, at 5.

Similarly, the Department will not consider whether other conditions existed in the rental unit which may be a basis for additional Sanitary Code violations. The Board of Health cited no other conditions that violated the relevant sections of the Sanitary Code other than the hall- and stairway light. Because parties may not contest the accuracy of the Board of Health's citation before the Department, 220 C.M.R. § 29.04(1), it is inappropriate for the Department to consider whether the Tenant's water heater, electric dryer, or electric heater were connected to the Tenant's circuit in 1991, as the Landlord argues, or whether someone else's electric heater was cross-wired to the Tenant's meters, as the Tenant argues.[8]

While the Tenant's testimony that her bill was inexplicably high, even in a month in which the apartment was vacant for part of that month, may be a starting point in a dispute about the accuracy of the meters registering her electricity usage, the Tenant has made no formal allegation that the meters serving her apartment were inaccurate. The Department will not issue any findings as to the accuracy of the meters because this is not an issue in dispute,

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[8] For these same reasons, the subject matter of the record request, a billing history of the adjacent apartments, is also not relevant to the matters in this dispute, and therefore not necessary to this Order. Nor is the testimony of Jane Haskell relevant, because she did not live in the building during any of the times in question, and the only purpose of her testimony was to show the existence of additional cross-wiring (Tr. at 145-46).

and no party introduced evidence on this question. The Tenant had proffered her testimony of the unexplained high billing in an attempt to prove that additional cross-wiring violations existed that were not cited. As discussed above, the Department is not the proper forum for proving the existence of additional Sanitary Code violations.

Finally, MECo presented evidence that in addition to the disputed amount, $2,528.75, due for electricity used at 72R Main Street, Rockport, Massachusetts, between October 31, 1990 to June 4, 1993, the Tenant owes $89.97 to MECo for electricity use after the Sanitary Code violation was corrected (Tr. at 164). Because the Tenant did not raise billing for this last period as an issue in dispute, this Order will not address this remaining balance of $89.97.

Therefore, the Department finds that no citation existed for the flood lights mounted to illuminate a parking area and connected to the Tenant's meters, because the Board of Health rescinded this citation and did not reinstate it. The Department further finds that a citation for a violation of the Sanitary Code existed for the overhead light mounted to illuminate the hall and stairway to an upstairs bedroom of the Tenant's apartment, but which was not connected to the Tenant's meters. The Department concludes, therefore, that the Tenant is not entitled to recover a reimbursement for utility payments for her electricity usage, and that the amount to be billed to the Tenant for electricity use between October 31, 1990 to June 4, 1993 is $2,528.78.

VI. ORDER

Accordingly, after due notice, hearing, and consideration, it is

ORDERED: That Massachusetts Electric Company cancel all bills rendered to the Estate of Leon Rosenbloom for electricity use at 72R Main Street, Rockport, Massachusetts between October 31, 1990 to June 4, 1993; and it is

FURTHER ORDERED: That Massachusetts Electric Company re-bill Isabel Coleman for $2,528.78, the amount in dispute.

By Order of the Department,

/s
James Connelly, Chairman

/s
W. Robert Keating, Commissioner

/s
Paul B. Vasington, Commissioner

/s
Eugene J. Sullivan, Jr., Commissioner

/s
Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).